

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Application of Alltel Communications, Inc.)	CC Docket No. 96-45
)	
For Designation as an Eligible)	
Telecommunications Carrier in the)	
State of North Carolina)	

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION[®]

CTIA – The Wireless Association[®] (“CTIA”)¹ hereby submits its comments in the above captioned proceeding in support of the Petition for Eligible Telecommunications Carrier (“ETC”) designation filed by Alltel Communications, Inc. (“Alltel”) in the rural telephone company areas of its licensed service territory in the State of North Carolina.²

INTRODUCTION

On October 13, 2005, Alltel filed an application (“Alltel Petition”) seeking ETC designation for rural areas within its licensed service area.³ CTIA supports Alltel’s Petition, which demonstrates that Alltel meets the requirements for designation as an

¹ CTIA – The Wireless Association[®] (formally known as the Cellular Telecommunications & Internet Association) is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See Parties Are Invited to Comment on Petitions for Eligible Telecommunications Carrier Designation, *Public Notice*, CC Dkt. No. 96-45, DA 05-3005 (rel. Nov. 18, 2005).

³ *In re* Application of Alltel Communications, Inc. For Designation as an Eligible Telecommunications Carrier in the State of North Carolina, CC Dkt. No. 96-45, (Oct. 13, 2005) (“Alltel Petition”).

ETC. Section 214(e)(6) provides for ETC designation of carriers not subject to state commission jurisdiction. Specifically, Section 214(e)(6) states, in relevant part:

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the two requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable federal and State law.⁴

Since Alltel is a commercial mobile radio service (“CMRS”) provider not subject to the authority of the North Carolina Utilities Commission (“NCUC”), the FCC has authority to grant ETC status to Alltel pursuant to 47 U.S.C. § 214(e)(6).

DISCUSSION

A. Alltel is Not Subject to the Jurisdiction of the North Carolina Utilities Commission

Pursuant to Section 214(e)(6), the Commission shall designate as an ETC a common carrier providing telephone exchange service and exchange access service that is not subject to the jurisdiction of a state commission, so long as the carrier otherwise meets the Act’s requirements. The Commission has held that, for this purpose: “[M]any CMRS providers (specifically cellular, broadband PCS and covered SMR) also provide telephone exchange service and exchange access as defined by the 1996 Act.”⁵ The Commission has also stated that a carrier may demonstrate that it “is not subject to the jurisdiction of a state commission” by providing an “affirmative statement” from the state

⁴ 47 U.S.C. §214(e)(6). *See also* Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, *Public Notice*, 12 FCC Rcd 22947 (1997).

⁵ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, CC Dkt. 96-98, 11 FCC Rcd 15,499, 15-998-99, at ¶1012(1996). *See also id.* at ¶1004 (“Congress recognized that some CMRS providers offer telephone exchange and exchange access services”).

commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation.⁶ On May 1, 2003, Alltel filed a Petition with the NCUC “seeking an affirmative declaratory ruling that it lacked jurisdiction to designate CMRS carriers as ETCs for purposes of receiving federal universal support.”⁷ On June 24, 2003, the NCUC found that “it lacked jurisdiction over CMRS services and that the appropriate venue for designation of ETC status for such services is with the FCC.”⁸

B. Alltel Offers All of the Services Supported by Universal Service Support Mechanisms

Alltel addressed the nine services and functionalities identified in the Commission’s rules, 47 C.F.R. § 54.101(a), that are the core services to be offered by an ETC and supported by federal universal service support mechanisms.⁹ Alltel’s universal service offerings will be provided primarily over its own network infrastructure, consisting of antennas, cell sites, towers, trunkings, mobile switching and interconnection facilities.¹⁰ Alltel states that it will advertise its new universal service offering to ensure that consumers within the designated service areas in North Carolina are aware of the service.¹¹ Further, Alltel states that it meets the additional eligibility criteria for ETC

⁶ See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, *Twelfth Report and Order, and Further Notice of Proposed Rulemaking*, CC Dkt. 96-98, 15 FCC Rcd 12208, 12264 (2000).

⁷ See Alltel Petition at 4.

⁸ See Alltel Petition, Exhibit B, Statement From North Carolina Utilities Commission That It Lacks Jurisdiction Over CMRS Applications (June 24, 2003).

⁹ See *id.* at 4-8.

¹⁰ See *id.* at 14.

¹¹ See *id.*

status adopted by the Commission in the *ETC Criteria Order*.¹² Accordingly, Alltel has satisfied the requirements of Sections 254 and 214(e)(1)(A) of the Communications Act of 1934 and Section 54.101(a) of the Commission's rules regarding ETC eligibility.

C. Designating Alltel as an ETC Will Advance the Public Interest

CTIA agrees with Alltel that the grant of Alltel's Petition will service the public interest by bringing the benefits of competition to an underserved marketplace.¹³ In addition, the proposed redefinition on a wire center by wire center basis is warranted under the Commission's competitively neutral universal service policies, and it constitutes precisely the same relief granted to similarly situated carriers by the Commission and several states.¹⁴ Designation of CMRS providers, such as Alltel, is consistent with the principal goals of the universal service program and provides unique benefits associated with wireless service, such as mobility, to consumers.

It is now well established that wireless carriers can bring significant benefits to the universal service program. One of the principal goals of the Telecommunications Act of 1996 was to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."¹⁵ In granting ETC status to CMRS carriers, the Commission has found that "[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost

¹² Federal-State Joint Board on Universal Service, *Report and Order*, 20 FCC Rcd 6371 (2005) ("ETC Criteria Order"). *See also* Alltel Petition at 8.

¹³ *See* Alltel Petition at 20.

¹⁴ *See id.* at 16.

¹⁵ Telecommunications Act of 1996, Public Law No. 104-104, 100 Stat. 56 (1996).

areas by increasing customer choice, innovative services, and new technologies.”¹⁶

Furthermore, the Commission also recognized the critical public safety role that wireless services can play in rural and insular areas by noting that “the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.”¹⁷

In this case, Alltel has committed to use available federal high-cost support for its intended purposes – the construction, maintenance and upgrading of facilities serving high-costs and rural areas for which support is intended. In addition, Alltel has also committed to comply with all provisions of CTIA’s Consumer Code for Wireless Services, maintain essential telecommunications services in times of emergency, and provide service to all potential customers within its requested ETC service area upon reasonable request.¹⁸

We note that Alltel is requesting ETC designation and redefinition for those portions of its licensed service area that covers only certain portions of rural telephone company study areas.¹⁹ Because section 54.315 of the Commission’s rules provides rural telephone companies ample opportunities to target support to only the highest-cost lowest-density portions of a study area, CTIA does not believe it is appropriate for the

¹⁶ Western Wireless Corporation, Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, CC Dkt. No. 96-45, 16 FCC Rcd 48, 55 (2000), *aff’d*, 16 FCC Rcd 19144, 19151 (2001) (“Wyoming Memorandum Opinion and Order”).

¹⁷ Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, *Memorandum Opinion and Order*, CC Dkt. No. 96-45 FCC 03-338, at ¶ 29 (2004) (“Virginia Cellular Order”).

¹⁸ See Alltel Petition at 12.

¹⁹ See *id.* at 16-18.

Commission to use “cream skimming” concerns as grounds for denying ETC petitions.²⁰

CTIA also does not believe it is appropriate to penalize CMRS providers when their licensed service areas do not happen to follow the contours of rural telephone company study area boundaries—especially when wireless licensed service area boundaries typically are determined by the FCC. Even if it was appropriate for the Commission to consider “cream skimming” as a grounds for denying ETC designations, there is no evidence here that Alltel is attempting to “cream skim” by only proposing ETC designation for the lowest-cost highest density exchanges in a rural telephone company study area with highly population densities.²¹

Accordingly, designating Alltel as an ETC in covered areas in the State of North Carolina would serve the public interest by increasing the availability of new, competitively priced services and technologies in North Carolina Communities.

²⁰ See 47 C.F.R. § 54.315.

²¹ See Alltel Petition at 18, 23; *see also* Highland Cellular Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, *Memorandum Opinion and Order*, CC Dkt. No. 96-45, FCC 04-37 at ¶ 32 (2004).

CONCLUSION

For the foregoing reasons, the Commission should exercise its authority to grant ETC status to Alltel for its requested service territories in the State of North Carolina.

Respectfully submitted,

/s/ Marlo Go

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